

BEFORE THE
ILLINOIS COMMERCE COMMISSION

THE CITY OF CARLINVILLE, ILLINOIS,)
a municipal corporation and body)
politic and corporate in Macoupin) DOCKET NO.
County, Illinois,) T13-0040

-VS-

UNION PACIFIC RAILROAD COMPANY,
AND THE ILLINOIS DEPARTMENT OF
TRANSPORTATION

Petition for an order of the Illinois Commerce Commission authorizing the installation of an at-grade pedestrian crosswalk with Union Pacific Railroad Company railroad tracks (MP 222.88) at the track's intersection with North Broad Street within the City of Carlinville, Macoupin County, Illinois, the payment of costs related thereto, including directing payment to be borne by the Illinois Department of Transportation Bureau of High Speed and Passenger Rail, and other stated or requested relief.

Thursday, April 25, 2013

Springfield, Illinois

Noticed to start at 10:00 a.m; actual start time 11:20 a.m.

BEFORE :

TIMOTHY DUGGAN, ALJ
L.A. COURT REPORTERS, LLC, by
Laurel Patkes, Reporter
CSR #084-001340

1 APPEARANCES:

2 JON K. ELLIS

1035 S. Second Street

3 Springfield, Illinois 62704

4 (Appearing on behalf of City of
Carlinville, Macoupin County,
5 Illinois.)

6 MACK SHUMATE

101 N. Wacker Drive

7 Suite 1920

Chicago, Illinois 60606

8 (Appearing on behalf of Union
9 Pacific Railroad Company via
videoconference.)

10

JENNIFER KUNTZ

11 2300 South Dirksen Parkway

Springfield, Illinois 62704

12

(Appearing on behalf of Illinois
13 Department of Transportation.)

14 JOHN BLAIR

527 E. Capitol Ave.

15 Springfield, Illinois 62701

16 (Appearing on behalf of staff of
the Illinois Commerce
17 Commission.)

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
BILL TINDALL III				
By Mr. Ellis	7		43	
By Judge Duggan		10		45
By Mr. Shumate		16		
DAVID McKERNAN				
By Judge Duggan		18/27		40
By Mr. Ellis	24		39	
By Mr. Shumate		31		
By Judge Duggan		34		
By Ms. Kuntz		37		
By Mr. Blair		38		

EXHIBITS

None.

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PROCEEDINGS

JUDGE DUGGAN: Pursuant to the authority vested in me by the State of Illinois and the Illinois Commerce Commission, I now call Docket T13-0040 for hearing.

May we have appearances starting with the City of Carlinville?

MR. ELLIS: Jon K. Ellis, Attorney at Law, appearing today on behalf of the City of Carlinville, Macoupin County, Illinois, 1035 South Second Street, Springfield, Illinois 62704. Phone number (217) 528-6835.

JUDGE DUGGAN: Okay. Union Pacific?

MR. SHUMATE: My name is Mack Shumate (S-h-u-m-a-t-e). I'm an attorney with the Union Pacific Railroad Company. Our offices are at 101 North Wacker Drive, Suite 1920, Chicago, Illinois 60606. Phone number is area code (312) 777-2055.

I have one witness today, Dave McKernan.

JUDGE DUGGAN: Okay. IDOT?

MS. KUNTZ: Jennifer Kuntz (K-u-n-t-z), 2300

1 South Dirksen Parkway, Springfield, Illinois 62764;
2 (217)782-3215.

3 JUDGE DUGGAN: Mr. Blair?

4 MR. BLAIR: John Blair appearing on behalf of
5 staff of the Illinois Commerce Commission's
6 Transportation Division's Rail Safety Section. I'm
7 at 527 East Capitol Avenue, Springfield, Illinois
8 62701.

9 JUDGE DUGGAN: Very good.

10 Okay. And we have two witnesses
11 today, is that correct, Mr. Tindall and Mr. McKernan,
12 correct? Would you both raise your right hand?

13 (Whereupon the witnesses were
14 sworn by Judge Duggan.)

15 JUDGE DUGGAN: Thank you very much.

16 Let the record show that before we
17 went on the record today, we had an off-the-record
18 discussion which I believe what we're going to do
19 shortly here is through witnesses and by stipulations
20 we'll summarize those discussions, and also I believe
21 that we've agreed that because of the nature of how
22 everybody wants certain language to read that it's

1 preferable that there be some informal work done as
2 to come up with an agreeable draft, and for that
3 reason, we would need a waiver of the ex parte
4 prohibition to have that cooperation.

5 So, Mr. Ellis, on behalf of
6 Carlinville, would you agree to waive the ex parte
7 prohibition for the purpose of working on an
8 agreement, coming to an agreement for an order?

9 MR. ELLIS: Yes, Judge.

10 JUDGE DUGGAN: Okay. Mr. Shumate?

11 MR. SHUMATE: Yes, we do.

12 JUDGE DUGGAN: Ms. Kuntz?

13 MS. KUNTZ: Yes, Your Honor.

14 JUDGE DUGGAN: Mr. Blair?

15 MR. BLAIR: Yes.

16 JUDGE DUGGAN: All right. Very good.

17 You want to go ahead and call your
18 first witness, Mr. Ellis?

19 MR. ELLIS: My only witness, Judge.

20 JUDGE DUGGAN: Your only witness, correct.

21 MR. ELLIS: Thank you.

22 I call Mr. Tindall.

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BILL EDWARD TINDALL III

called as a witness herein, on behalf of the
Petitioner, having been first duly sworn on his oath,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q. Would you please state your name for the
record and spell your last name, please?

A. My name is Bill Edward Tindall III. Last
name is spelled T-i-n-d-a-l-l.

Q. And, Mr. Tindall, you're appearing here
today on behalf of the City of Carlinville, is that
correct?

A. Yes.

Q. Okay. Could you tell us where you're
employed?

A. I am employed at HMG Engineers, Inc. out of
Carlyle, Illinois.

Q. Okay. And what is your exact job title?

A. Project manager.

Q. Okay. And how long have you been in that
position with HMG Engineers?

1 A. About seven months.

2 Q. What professional license, if any, do you
3 hold from the State of Illinois?

4 A. Professional engineering license.

5 Q. Okay. And how long have you been licensed
6 by the State of Illinois?

7 A. About five years.

8 Q. Okay. Could you briefly tell us what
9 project you're working on on behalf of the City of
10 Carlinville that brings you here today?

11 A. I'm working on the North Broad Street
12 sidewalk project in Carlinville, Illinois.

13 Q. Okay. And could you just sort of give us a
14 brief description of what that project entails?

15 A. Yes. It will be additional sidewalk along
16 the east side of North Broad Street beginning at the
17 north side of the existing right-of-way line along
18 the railroad, Union Pacific's Railroad's corridor and
19 heading north and then approximately the location of
20 where North Broad Street intersects with Blackburn
21 Street.

22 Q. Okay. Do you know approximately what the

1 distance is from the north side of the railroad's
2 right-of-way to the south side of Blackburn Street,
3 what that might be?

4 A. That's anywhere from three to five
5 hundred feet, in that range.

6 Q. Okay. And do you know how wide this
7 sidewalk is going to be?

8 A. I believe it will end up being about five
9 feet wide.

10 Q. Okay. To your knowledge, Mr. Tindall, is
11 there an existing sidewalk on the east side of North
12 Broad Street south of the railroad right-of-way?

13 A. Yes.

14 Q. Okay. And on the south side of the
15 railroad right-of-way where North Broad intersects
16 with the rail line, is there another street that
17 intersects with North Broad Street?

18 A. Yes.

19 Q. Do you know what that street is?

20 A. Yes, Rice Street.

21 Q. And do you know if there is an existing
22 sidewalk that basically is parallel to Rice Street?

1 A. Yes, there is.

2 MR. ELLIS: Okay. Judge, I don't think I have
3 any other questions at this time.

4 JUDGE DUGGAN: Thank you.

5 CROSS-EXAMINATION

6 BY JUDGE DUGGAN:

7 Q. So there is an existing sidewalk on both
8 sides of the right-of-way, excuse me, north and south
9 of the right-of-way, correct?

10 A. No.

11 Q. Okay. What did I just hear?

12 A. The sidewalk for the project I'm working on
13 has not been built yet.

14 JUDGE DUGGAN: Let's go off the record a
15 second.

16 (Whereupon an off-the-record
17 discussion transpired at this
18 time.)

19 JUDGE DUGGAN: Back on the record.

20 Q. Okay. So to clarify, because I didn't
21 follow very well then, the existing sidewalks are
22 parallel to North Broad Street at a point south of

1 Rice Street?

2 A. Yes.

3 Q. And also parallel to Rice Street as it runs
4 east and west, correct?

5 A. Yes.

6 Q. Okay. And that is on the north side of
7 Rice Street, correct?

8 A. Uh-huh.

9 Q. There is no existing sidewalk running north
10 of Rice Street at this point, is that correct?

11 A. Correct.

12 Q. So this proposed plan to build a sidewalk
13 is to build this sidewalk from Rice Street to
14 Blackburn on the north, correct?

15 A. Uh-huh.

16 Q. And that total distance is about five or
17 six hundred feet, is that correct?

18 A. Correct.

19 Q. And you said the distance north of the
20 railroad crossing to Blackburn is somewhere in the --

21 A. It would be in the range of three to five
22 hundred feet.

1 Q. Very good.

2 And the sidewalk is going to run
3 parallel to North Broad Street, correct?

4 A. Yes.

5 Q. Okay. It will run north and south?

6 A. Yes.

7 Q. All right. And there is a single railroad
8 track which intersects Broad Street north of Rice
9 Street, correct?

10 A. Correct.

11 Q. And it intersects it at somewhat of a
12 southwest-northeast angle, correct?

13 A. Yes.

14 Q. And how far east of North Broad Street is
15 the sidewalk to be built approximately?

16 A. In the range of 15 to 20 feet, about that
17 distance, from edge to edge. It will be located just
18 on the inside of the existing right-of-way line.

19 Q. What right-of-way?

20 A. The roadway right-of-way along the east
21 line north of North Broad Street right-of-way line.
22 It will be located just inside of that location.

1 Q. Okay. At the point where the pedestrian
2 path crosses the tracks and the railroad
3 right-of-way, do you have any more accurate statement
4 of how far the pedestrian path would be built from
5 North Broad?

6 A. It will be a little narrower than that,
7 probably in the range around 16 feet I believe. It
8 will be slightly closer to the road than what our
9 concrete sidewalk will be.

10 Q. You said that it will be closer to the road
11 than your concrete sidewalk would be? Is that what
12 you said?

13 A. Yes. Our sidewalk will be shifted closer
14 to the right-of-way line to allow room between the
15 roadway and the sidewalk to make room for ditching
16 and drainage.

17 Q. There's only one sidewalk, right?

18 A. Yes.

19 Q. Okay. And I hear you saying your sidewalk
20 is going to be closer to the sidewalk is what I keep
21 hearing.

22 A. No. I thought you were asking location of

1 the sidewalk crossing the railroad track within the
2 Union Pacific's right-of-way. I thought you were
3 asking about the location of where that is and how
4 close that was to the road compared to the sidewalk
5 of our portion north of that right-of-way.

6 Q. Okay. So you're distinguishing --

7 A. The difference between.

8 Q. You're distinguishing that that which
9 crosses the crossing is not necessarily your
10 sidewalk?

11 A. Correct.

12 Q. Okay. But nonetheless, at that point where
13 the sidewalk will cross the Union Pacific tracks,
14 that is the point at which I'm interested in the
15 distance from North Broad Street, and that
16 location --

17 A. I believe that's about 16 feet.

18 Q. I'm not sure that I heard, so tell me the
19 answer about the distance from the sidewalk at the
20 point where it crosses the railroad right-of-way to
21 North Broad Street, please.

22 A. I believe it's a distance of between 16 and

1 17 feet.

2 Q. Very good. Thank you.

3 Now, are you aware of the City of
4 Carlinville's commitment to pay for a portion of the
5 project?

6 A. Yes.

7 Q. Okay. And is the City of Carlinville going
8 to pay for that portion of the sidewalk which is
9 north of the railroad right-of-way?

10 A. I believe so, yes.

11 Q. Okay. And to your knowledge, that is the
12 extent of the City of Carlinville's financial
13 commitment, correct?

14 A. Yes.

15 JUDGE DUGGAN: Okay. Very good.

16 Any other questions of this witness?

17 Mr. Shumate.

18 MR. SHUMATE: Yes.

19 Mr. Tindall, a couple of questions
20 here.

21

22

CROSS-EXAMINATION

BY MR. SHUMATE:

Q. You're a consultant or an independent contractor for the City of Carlinville, is that correct?

A. Correct; I am a consultant.

Q. Consultant.

Did you assist with the preparation of the petition which has been filed by the City of Carlinville in this matter?

A. Yes.

Q. Okay. Does it accurately reflect the project in the pedestrian crossing that the City of Carlinville seeks ICC approval for at this hearing?

A. Yes.

Q. Okay. Do you know whether or not the City of Carlinville has all the real property interest and the funding necessary to complete its portion of the project?

A. I do not know for sure. I'm not aware of that.

MR. SHUMATE: Okay. That's okay. No further

1 questions.

2 JUDGE DUGGAN: Ms. Kuntz?

3 MS. KUNTZ: No.

4 JUDGE DUGGAN: Mr. Blair?

5 MR. BLAIR: No.

6 JUDGE DUGGAN: Very good.

7 Mr. Ellis, anything further?

8 MR. ELLIS: No, Judge.

9 (Witness excused.)

10 JUDGE DUGGAN: Okay. Mr. Shumate, do you want
11 to call your witness with regard to the automatic
12 gates and the nature of the crossing surface at this
13 intersection or the pedestrian crossing?

14 MR. SHUMATE: Yes.

15 JUDGE DUGGAN: Okay. Well, excuse me a second.
16 I mean, I think this is all part of your case really.

17 MR. ELLIS: Yes, it is, Judge, yes, it is.

18 JUDGE DUGGAN: Okay. All right. Well, would
19 you like to call Mr. McKernan then? Pardon me,
20 Mr. Shumate, but it's still Mr. Ellis's case in
21 chief.

22 MR. ELLIS: I would defer to Mr. Shumate's line

1 of questioning.

2 JUDGE DUGGAN: Okay. But you want to call
3 Mr. McKernan then?

4 MR. ELLIS: Pardon me?

5 JUDGE DUGGAN: You want to call Mr. McKernan as
6 your witness then?

7 MR. ELLIS: Well, again...

8 JUDGE DUGGAN: It's still your case in chief.

9 MR. ELLIS: Sure, I can call him.

10 JUDGE DUGGAN: Okay. Do you mind if I question
11 him?

12 MR. ELLIS: Proceed, Judge.

13 JUDGE DUGGAN: Very good.

14 DAVID WILLIAM McKERNAN

15 called as a witness herein, on behalf of the
16 Petitioner, having been first duly sworn on his oath,
17 was examined and testified as follows:

18 EXAMINATION

19 BY JUDGE DUGGAN:

20 Q. Mr. McKernan, state your name for the
21 record.

22 A. David William McKernan (M-c-K-e-r-n-a-n).

1 Q. And who is your employer.

2 A. Union Pacific Railroad Company.

3 Q. And what is your position?

4 A. Manager of industry public projects.

5 Q. Okay. In that position, are you involved
6 at all with the project to build a pedestrian
7 crossing across Union Pacific tracks in Carlinville,
8 Illinois between Rice and Blackburn parallel to North
9 Broad Street?

10 A. Yes. I'm part of the high speed rail
11 project in the State of Illinois.

12 Q. And does, in fact, Union Pacific have a
13 mainline track that crosses Broad Street in
14 Carlinville, Illinois just north of Rice Street?

15 A. That is correct, sir.

16 Q. And does it cross at approximately a
17 northeast-southwest angle?

18 A. Yes, it's skewed at about 57 percent.

19 Q. Okay. Very good.

20 So is this pedestrian crossing,
21 proposed pedestrian crossing somehow associated with
22 the high speed rail project?

1 A. Yes, sir.

2 Q. And how's that?

3 A. There are a lot of applications up and down
4 the whole line segment where cities, towns, villages,
5 municipalities have come to the project team
6 requesting in some cases such as Carlinville an
7 application for a pedestrian crossing.

8 Q. Okay. And this particular crossing,
9 there's some cooperation between Union Pacific and
10 the city in getting this pedestrian crossing
11 constructed?

12 A. Yes, sir.

13 Q. And what is Union Pacific proposing and
14 offering in this project?

15 A. Well, the construction, the oversight of
16 the construction, the installation of the four quad
17 gates and the ped gates is what union Union Pacific
18 would oversee the project as well as being part of
19 design teams and the overall scope of the project.

20 Q. Okay. So the four quad gates you referred
21 to, that has to do with the vehicular crossing,
22 correct?

1 A. That's correct.

2 Q. And in addition, because there is a
3 proposed pedestrian crossing here, you refer to gates
4 at the pedestrian crossing, correct?

5 A. That's correct.

6 Q. Okay. And is it your understanding of the
7 proposal presently that there would be a gate on the
8 north side and the south side of the pedestrian
9 crossing?

10 A. That's correct.

11 Q. Okay. And specifically for the pedestrian
12 crossing, correct?

13 A. That's correct.

14 Q. Okay. And would the mast of both the gate
15 on the north and the gate on the south be on the west
16 side of the pedestrian crossing?

17 A. I believe that to be correct, sir.

18 Q. Okay. And then on the east side of the
19 crossing, would there be a post from which fencing
20 would extend approximately 150 feet parallel to the
21 track?

22 A. Yes.

1 Q. And that would only be on the south side of
2 the, excuse me, no, that would be on both the north
3 and the south side of the tracks, correct?

4 A. That's correct.

5 Q. And that would extend 150 feet parallel to
6 the track out from the pedestrian path, correct?

7 A. Minimum, yes.

8 Q. Okay. And is Union Pacific going to
9 construct the crossing not only at the vehicular
10 portion but also over the pedestrian path portion?

11 A. That's correct.

12 Q. Okay. So whatever surface the Union
13 Pacific is going to use for the vehicular crossing
14 surface, it will extend that same type of surface out
15 beyond the pedestrian path, correct?

16 A. That is correct, sir.

17 Q. Okay. And would it extend to the extent of
18 the east side of the path and then to whatever
19 distance the concrete panels are that you would use
20 for the crossing until the termination of that panel?

21 A. Yes, that's correct.

22 Q. And is that what you're planning on using

1 for this crossing surface is concrete panels?

2 A. Yes, sir.

3 Q. Would those gates at the pedestrian path be
4 interconnected with the warning systems at the
5 vehicular crossing?

6 A. Yes, they would.

7 Q. Okay. And that means that when the signals
8 at the vehicular crossing are indicated to be lowered
9 that those in the pedestrian path would also be
10 lowered?

11 A. That's correct.

12 Q. And then when they're to be raised, they
13 will be raised at the pedestrian path also, correct?

14 A. That's correct.

15 Q. Is Union Pacific responsible for any of the
16 cost of this work we just discussed?

17 A. The cost is being borne by the high speed
18 rail project.

19 Q. Okay. So Union Pacific is not responsible
20 for the cost?

21 A. The ped application, no.

22 Q. Okay. Well, then let's just talk about the

1 pedestrian application and to the extent that the
2 crossing surface extends over there.

3 Those costs are not being borne by
4 Union Pacific, is that correct?

5 A. That's correct, sir.

6 Q. Very good. Thank you.

7 And off the record we discussed how
8 the specifics of what would be required at this
9 pedestrian crossing would be defined, is that
10 correct?

11 A. Yes, sir.

12 JUDGE DUGGAN: Okay. Then I think we'll come
13 back to that after we complete all the other
14 questioning then.

15 Mr. Ellis, your case. Did you have
16 any more questions of Mr. McKernan?

17 MR. ELLIS: I just have two very brief
18 questions, Judge.

19 DIRECT EXAMINATION

20 BY MR. ELLIS:

21 Q. Do you happen to know what would be the
22 projected width of the crosswalk within your railroad

1 right-of-way?

2 A. Of the pedestrian?

3 Q. Right, of the pedestrian crosswalk, the
4 crossing, how wide that will be.

5 A. I guess off the record we could do the math
6 to make that determination. I'm not knowing how
7 wide --

8 Q. Okay. I'm not sure you're understanding my
9 question then.

10 A. I don't know how wide the road is because
11 our specs go three feet beyond the travel path, so
12 that crossing will be that three feet beyond the
13 travel path all the way across Broad Street all the
14 way to the point past the pedestrian crossing.

15 Q. Okay. Let me try again.

16 How wide will the sidewalk itself be?

17 A. I've been told five feet.

18 Q. Five feet. Okay. All right. I just
19 wanted to get that on the record.

20 A. Okay.

21 Q. The other thing, is it your understanding
22 that on the south side of the existing railroad

1 right-of-way that Union Pacific will construct the
2 sidewalk to extend to an existing sidewalk that's
3 just north of Rice Street?

4 A. I am unaware of that, of being that defined
5 as to where our work would end to meet up with the
6 city's sidewalk.

7 It's been stated that the city is
8 going to bring the sidewalk up to the railroad
9 right-of-way line, and then from the right-of-way
10 line across the tracks to the other right-of-way line
11 would be part of our work associated with the
12 pedestrian crossing.

13 Q. Okay. So you're unaware of any discussions
14 that may have been had where the sidewalk would be
15 extended from the south side of your right-of-way to
16 the existing sidewalk at Rice Street?

17 JUDGE DUGGAN: Why don't we go off the record
18 if you don't mind.

19 (Whereupon an off-the-record
20 discussion transpired at this
21 time.)

22 JUDGE DUGGAN: Back on the record.

1 Q. BY MR. ELLIS: Okay. So, Mr. McKernan, now
2 that you've had a chance to look at the aerial, do I
3 need to restate that question?

4 A. No, sir.

5 Q. Okay. So do you have an answer for that?

6 A. We're going to make the connection out to
7 what is called Rice Street.

8 Q. Where there is an existing sidewalk right
9 now?

10 A. Yes.

11 MR. ELLIS: Okay. That's it, Judge.

12 CROSS-EXAMINATION

13 BY JUDGE DUGGAN:

14 Q. So either UP or its contractors will have
15 the authority to go beyond this right-of-way to Rice
16 Street, is that correct?

17 A. Yes.

18 Q. Okay. And then what I didn't ask you
19 before when you said that you would be
20 installing/extending the crossing surface over and
21 beyond the extent of the pedestrian path, also you'd
22 be constructing on both sides of the crossing surface

1 to the end of your right-of-way, correct?

2 Okay. Let me clarify. The crossing
3 surface that you're going to construct normally does
4 not go from one side of your right-of-way to the
5 other side of your right-of-way, correct?

6 A. No, sir. The crossing -- are you talking
7 about the crossing width, the width of the crossing?

8 Q. Correct.

9 A. The width of the crossing is determined by
10 the roadway width, and we have specs for minimum
11 standards for crossing lengths, and our minimum is
12 three feet beyond the traveled path of the roadway on
13 both sides.

14 Q. Okay. So maybe --

15 A. So you could have a 24-foot roadway and
16 four-foot shoulders which would be 32 feet, and our
17 panels, if we use the standard panel of the 8-foot
18 panel, we would wind up putting in a 40-foot concrete
19 road crossing to cover the specifications. I think
20 the states have two and a half feet past the traveled
21 path.

22 Q. Okay. I think we're talking widths from

1 different perspectives. You're talking width from
2 the perspective of the roadway, and I'm talking width
3 as you're crossing the pedestrian path.

4 A. Okay. We do all the work that's in our
5 right-of-way.

6 Q. Okay. Then listen very closely to this
7 question, and then if you don't understand the
8 question or there's any question, let me know.

9 This particular right-of-way runs
10 northwest, excuse me, southwest and northeast,
11 correct?

12 A. Yes.

13 Q. Okay. And do you have any ballpark of the
14 width of this right-of-way?

15 A. Our right-of-way widths vary within
16 Carlinville.

17 Q. Okay. I'm asking for...okay. Let's say...

18 A. In general, it would be like a hundred feet
19 wide.

20 Q. Okay. Let's say that this right-of-way is
21 a hundred feet, okay? Your crossing surface as you
22 cross the roadway and as you extend it out towards

1 the path, the crossing surface itself is not going to
2 be a hundred feet, is it?

3 A. No.

4 Q. Okay. So it's not going to totally fill
5 out to the edges of the right-of-way?

6 A. No.

7 Q. Okay. But in this case, there's a
8 pedestrian path that needs to be connected to the
9 north and the south within the right-of-way, correct?

10 A. Correct.

11 Q. So it needs to be extended past where you
12 would normally be installing the crossing surface,
13 correct?

14 A. Correct.

15 Q. So those concrete panels, in addition to
16 the concrete panels you discussed, then to connect
17 the paths, there would need to be an additional
18 construction of pedestrian path north and south
19 within the right-of-way, correct?

20 A. Correct.

21 Q. Okay. And UP intends to do that, correct?

22 A. Yes.

1 Q. Okay. Very good.

2 In addition, as Mr. Ellis pointed out,
3 you would also, through your contractor, extend south
4 outside of your right-of-way to Rice Street, correct?

5 A. Yes.

6 JUDGE DUGGAN: Very good.

7 Okay. Mr. Ellis, anything else on
8 that?

9 MR. ELLIS: No, Judge.

10 JUDGE DUGGAN: Mr. Shumate?

11 MR. SHUMATE: Yes.

12 Mr. McKernan, a couple questions for
13 you.

14 CROSS-EXAMINATION

15 BY MR. SHUMATE:

16 Q. First of all, you referenced earlier in
17 your testimony 57 percent with regard to the angle.

18 Is that supposed to be 57 percent or
19 57 degrees?

20 A. 57 degrees. I apologize.

21 Q. Okay. Next, with regard to the surface,
22 the surface will be included as part of the project

1 that the Union Pacific will be responsible for, is
2 that correct?

3 A. That's correct.

4 Q. Okay. Have you had an opportunity to look
5 at the petition that was filed by the City of
6 Carlinville in this matter?

7 A. Yes, briefly yesterday, yes.

8 Q. Okay. And has the Engineering Department
9 reviewed, to your knowledge, the specifications for
10 this project?

11 A. Yes.

12 Q. Have they been approved by the Engineering
13 Department of the Union Pacific Railroad Company?

14 A. Yes. We have no objections.

15 Q. Okay. Now I'd like to -- do you have a
16 copy of the petition there?

17 A. Pardon me?

18 Q. Do you have a copy of the petition there?

19 A. Right in front of me, Mack.

20 Q. Okay. Now, go to page 2 of the petition if
21 you would, please, and I'd like you to look at
22 paragraph 4.

1 A. Okay.

2 Q. There's been some reference to the high
3 speed rail project. The last line of Section 4,
4 would you read that into the record, please, just the
5 last line, not sentence, of Section 4.

6 A. This existing at-grade crossing is
7 protected by flashing warning lights and gates.

8 Q. No, no, no; the last sentence.

9 A. That is the last sentence.

10 Q. Excuse me, excuse me. The last line.

11 A. Chicago-St. Louis high speed rail
12 improvement project.

13 Q. Is that a capitalized term?

14 A. I would call it that.

15 Q. Okay. To your knowledge, is that the
16 formal name for what we've been referring to in this
17 hearing as the high speed rail project?

18 A. Yes.

19 Q. Okay. Now, you were also shown a
20 stipulation for orders that was delivered by the City
21 of Carlinville, is that correct?

22 A. That's correct.

1 Q. Okay. Did Union Pacific have any
2 objections to that stipulation for orders?

3 A. Not to my knowledge, no.

4 MR. SHUMATE: Okay. No further questions, Your
5 Honor.

6 JUDGE DUGGAN: Okay. Is that your position
7 also, Mack, that you're agreeing or stipulating to,
8 assuming that this document finds its way into the
9 record, that you're stipulating to that?

10 MR. SHUMATE: Yes, with the modifications that
11 you've already referenced with regard to the order,
12 yes, sir.

13 CROSS-EXAMINATION

14 BY JUDGE DUGGAN:

15 Q. Okay. Mr. McKernan, the surface of the
16 pedestrian path to be built within the railroad
17 right-of-way that will not be part of what would
18 ordinarily be the crossing extension with the
19 concrete panels, what will that material be?

20 A. That concrete will be fully concrete
21 paneled roadway to the end of the pedestrian pathway.
22 We don't leave a gap in between there because that

1 causes water entrapment. Creates mud, creates
2 subgrade issues. So it will be concrete from start
3 to finish.

4 Q. Okay. I'm not sure that we're talking the
5 same direction here. I'm talking north-south.
6 North-south within the right-of-way, you're going to
7 be placing the crossing concrete panel surface going
8 along the railroad right-of-way northwest-southeast,
9 and that is not going to take up the entire width of
10 the right-of-way, so you're going to have some space
11 north and south of that concrete surface within the
12 right-of-way, and I am asking when you build the
13 sidewalk from what would otherwise be the crossing
14 surface panels, what material will you use to connect
15 to the sidewalk?

16 A. Bituminous asphalt.

17 Q. Okay. So it's going to be bituminous
18 asphalt.

19 And is that on the north and south to
20 connect to the end of the right-of-way?

21 A. Yes.

22 Q. Okay. And is Union Pacific going to have

1 the responsibility to maintain that bituminous
2 asphalt?

3 A. Yes.

4 Q. As well as the rest of its crossing
5 surface, correct?

6 A. Yes.

7 Q. And it will also pay the cost of
8 maintenance of that bituminous asphalt, correct?

9 A. Repeat that, please.

10 Q. Union Pacific will be responsible both for
11 the maintenance of the bituminous asphalt portion of
12 the path as well as the cost of maintaining the
13 bituminous portion of the path, correct?

14 A. The cost would be agreed upon when we have
15 a maintenance agreement between the state and Union
16 Pacific Railroad.

17 JUDGE DUGGAN: Let's go off the record.

18 (Whereupon an off-the-record
19 discussion transpired at this
20 time.)

21 JUDGE DUGGAN: Back on the record.

22 Q. So we clarified off the record,

1 Mr. McKernan, that it's your understanding, and I
2 will confirm this with IDOT, but it's your
3 understanding that Union Pacific will be responsible
4 for the actual maintenance of the pedestrian path
5 within the right-of-way but that IDOT will be
6 responsible for the cost of that maintenance, is that
7 correct?

8 A. Correct.

9 JUDGE DUGGAN: Okay. We'll start all over.

10 Mr. Ellis, any further questions of this witness?

11 MR. ELLIS: No, Judge.

12 JUDGE DUGGAN: Mr. Shumate, any further
13 questions of this witness?

14 MR. SHUMATE: No, Your Honor.

15 JUDGE DUGGAN: IDOT?

16 MS. KUNTZ: Yes, I have one question.

17 CROSS-EXAMINATION

18 BY MS. KUNTZ:

19 Q. You talked about the sidewalk extension
20 from the railroad right-of-way to Rice Street.

21 Do you know what I'm talking about?

22 A. Yes, ma'am.

1 Q. Do you know the approximate length of that
2 extension starting from the right-of-way to Rice
3 Street? Do you know how big that area is?

4 A. No, I do not. I don't know that detail.

5 MS. KUNTZ: Okay. Thank you.

6 JUDGE DUGGAN: Okay. Mr. Blair?

7 MR. BLAIR: Yes. Thank you.

8 CROSS-EXAMINATION

9 BY MR. BLAIR:

10 Q. Mr. McKernan, if the Commission approves
11 Carlinville's petition and grants the new pedestrian
12 crossing as far as construction, when would that
13 commence?

14 A. Bids were let for this tier on May 14th or
15 due back May 14th. I apologize. The bids are due
16 back May 14th. We should start construction latter
17 part of June, first of July on this tier which
18 includes Carlinville.

19 Q. Okay. Thank you.

20 And you testified that pedestrian
21 gates would be installed by Union Pacific forces at
22 this pedestrian crossing, is that correct?

1 A. Yes.

2 Q. And the design of the pedestrian crossings
3 at this location, is this going to be consistent with
4 the pedestrian gate installations at other high speed
5 rail pedestrian crossings that are now in place?

6 A. Yes, sir.

7 MR. BLAIR: That's all the questions. Thank
8 you.

9 JUDGE DUGGAN: Mr. Ellis?

10 MR. ELLIS: Judge, if I may?

11 REDIRECT EXAMINATION

12 BY MR. ELLIS:

13 Q. You just mentioned the date of May 10th and
14 then sometime during June, and I take it you're
15 talking the year 2013. Would that be correct?

16 A. I said the bids would be back May 14th.

17 Q. May 14th. Okay. 2013?

18 A. Yes.

19 Q. Okay. And June would also be 2013?

20 A. That's correct.

21 Q. Okay. Thank you.

22 A. Give or take.

1 Q. But the year 2013?

2 A. Yes.

3 MR. ELLIS: Okay. Thank you.

4 RECROSS-EXAMINATION

5 BY JUDGE DUGGAN:

6 Q. And what's your estimated completion time
7 for the project at this intersection?

8 A. I do not have that information mainly
9 because when you go through it, the segment, and this
10 is part of ICC involvement, was it 15 locations, 13
11 locations, that you have to seek these installations
12 accordingly, so I can't tell you exactly what
13 timeframe Broad Street would begin.

14 Q. I think we're just looking for some
15 six-month period, one year, 18 months, two years?

16 A. I would think a year from the time we
17 start. The ICC generally gives us a year on the
18 order.

19 Q. So would that be reasonable?

20 A. I think that's reasonable, and if it's not,
21 sir, we'll file for an extension.

22 MR. BLAIR: Twelve months.

1 JUDGE DUGGAN: Okay. Then last part of your
2 case is IDOT's contribution I believe and then
3 stating the standard by which the safety features
4 will be implemented, but since IDOT does not have a
5 witness...is that correct, Ms. Kuntz?

6 MS. KUNTZ: That is correct.

7 JUDGE DUGGAN: So you're willing to put IDOT's
8 responsibility in by representation?

9 MS. KUNTZ: That is correct.

10 JUDGE DUGGAN: And is it your representation
11 then that IDOT is going to contribute, that it will
12 fully fund this pedestrian crossing within the
13 right-of-way, within UP's right-of-way and the
14 construction of the sidewalk south to Rice Street?
15 Is that correct?

16 MR. ELLIS: Yes, Your Honor.

17 JUDGE DUGGAN: Okay. In addition...excuse me.
18 And that will include all the protective warning
19 devices and interconnection, correct?

20 MS. KUNTZ: Yes.

21 JUDGE DUGGAN: And in addition, IDOT is going
22 to be responsible for the costs of future maintenance

1 of this pedestrian path, is that correct?

2 MS. KUNTZ: That is correct.

3 JUDGE DUGGAN: That's within the right-of-way?

4 MS. KUNTZ: Yes.

5 JUDGE DUGGAN: Okay. Off the record.

6 (Whereupon an off-the-record
7 discussion transpired at this
8 time.)

9 JUDGE DUGGAN: Back on the record then.

10 Any questions?

11 MR. ELLIS: Of that line of questioning?

12 JUDGE DUGGAN: Anything.

13 MR. ELLIS: I do. I need to recall
14 Mr. Tindall.

15 JUDGE DUGGAN: Oh, okay. Well, let's finish
16 with IDOT first and any representations that they may
17 have to make on behalf of IDOT.

18 MR. ELLIS: No, no questions.

19 JUDGE DUGGAN: Mr. Shumate, do you have any
20 questions or clarifications with Ms. Kuntz regarding
21 IDOT's role in this?

22 MR. SHUMATE: No, I do not.

1 JUDGE DUGGAN: Okay. Mr. Blair?

2 MR. BLAIR: No.

3 JUDGE DUGGAN: Very good.

4 Can you think of anything else you
5 need to contribute here?

6 MS. KUNTZ: No, Your Honor.

7 JUDGE DUGGAN: Very good.

8 Okay. Mr. Ellis, you want to recall
9 your witness Mr. Tindall, correct?

10 MR. ELLIS: Mr. Tindall, that's correct.

11 Mr. Tindall, I remind you you're still
12 under oath.

13 BILL EDWARD TINDALL III

14 recalled as a witness herein, on behalf of the
15 Petitioner, having been previously sworn on his oath,
16 was examined and testified as follows:

17 REDIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q. I believe you said you'd like to clarify
20 something.

21 A. Yes.

22 Q. Please do that.

1 A. The measurement I gave from the edge of
2 pavement to the edge...where I was referring to the
3 distance between the sidewalk and the roadway within
4 the railroad right-of-way, the distance I said was
5 incorrect. I wanted to correct it. It's more in the
6 range of 12 feet to 14 feet. I spoke incorrectly
7 before. I gave the wrong measurement.

8 And as far as the length of our
9 project north of the right-of-way, it's more in the
10 range of 200 feet to 250 feet in length from the
11 north right-of-way line to Blackburn Street.

12 Q. Okay. The only other thing, Mr. Tindall,
13 that part of the sidewalk proposed to be constructed
14 from the south edge of the railroad right-of-way to
15 the existing Rice Street railroad, I mean sidewalk,
16 do you have any idea what that distance might be?

17 A. It's about 20 feet.

18 MR. ELLIS: Okay. Great. Thank you.

19 Nothing further, Judge.

20 JUDGE DUGGAN: All right. Let's off the
21 record.

1 (Whereupon an off-the-record
2 discussion transpired at this
3 time.)

4 JUDGE DUGGAN: Back on the record.

5 RECROSS-EXAMINATION

6 BY JUDGE DUGGAN:

7 Q. Okay. So 200, 250 north of the
8 right-of-way to Blackburn; about 20 feet south of the
9 right-of-way to Rice. Correct?

10 A. Yes.

11 Q. Okay. And with the distance of the
12 right-of-way, again, we're talking somewhere between
13 four and five hundred feet as opposed to the five or
14 six, is that right?

15 A. Right.

16 JUDGE DUGGAN: Okay. Very good.

17 Anything else, Jon?

18 MR. ELLIS: No, Judge.

19 JUDGE DUGGAN: Mr. Shumate, anything further on
20 that?

21 MR. SHUMATE: Not on that, no.

22 JUDGE DUGGAN: Okay. Ms. Kuntz, anything

1 further on that?

2 MS. KUNTZ: No, Your Honor.

3 JUDGE DUGGAN: Mr. Blair, anything further on
4 that?

5 MR. BLAIR: No.

6 (Witness excused.)

7 JUDGE DUGGAN: Now, it's my understanding
8 pursuant to our off-the-record discussion that the
9 specific design details with regard to this
10 pedestrian crossing and the safety features that the
11 parties would like language to ensure that this, that
12 the design, excuse me, the safety treatments here are
13 consistent with those implemented at other high speed
14 rail associated pedestrian crossings throughout the
15 state and that rather than state specifically what
16 those design features might be, that the best way to
17 define that standard would be to specifically state
18 that they be consistent with the other high speed
19 rail associated pedestrian safety treatments
20 throughout the state.

21 And to define that standard, I have
22 written down something that started with my

1 understanding of what Mr. Blair said with a few
2 additions from Mr. McKernan and Mr. Shumate, and if
3 agreeable, I will read that into the record
4 understanding that that is not the be all end all
5 final definition. It is the working language which,
6 as we discussed at the beginning of this hearing, may
7 then be circulated for changes, clarifications,
8 corrections, precision, whatever is needed for the
9 parties to agree that this is meaningful and
10 agreeable language.

11 With that understanding, is it
12 agreeable that I go ahead and read the draft in the
13 record or does anybody have a comment before I do
14 that?

15 Mr. Ellis?

16 MR. ELLIS: No comment, Judge.

17 JUDGE DUGGAN: Mr. Shumate?

18 MR. SHUMATE: Are you going to read it off the
19 record first so that we can hear it?

20 JUDGE DUGGAN: I'd rather read it on the record
21 because I don't want to repeat it again off the
22 record. It's all going to be open for discussion no

1 matter what, Mr. Shumate.

2 MR. SHUMATE: Okay. That's fine. I'm fine
3 with it.

4 JUDGE DUGGAN: As I say, this is what I heard
5 that would be the start of the working draft.

6 Ms. Kuntz, any objection to me going
7 ahead and reading this in the record?

8 MS. KUNTZ: No.

9 JUDGE DUGGAN: Okay. Mr. Blair?

10 MR. BLAIR: No.

11 JUDGE DUGGAN: Very good.

12 That the standard that would be
13 inserted in the order would be that the pedestrian
14 crossing safety treatments, including fencing, to be
15 designed, constructed, installed, implemented,
16 operated and maintained at this pedestrian path shall
17 be consistent with all other high speed rail
18 associated pedestrian crossing safety treatments
19 implemented and in place to date in the State of
20 Illinois.

21 Understanding that we're going to work
22 with whatever language is put in the order,

1 understanding that this is what I understood the
2 parties to come to propose, let me ask a twofold
3 question here.

4 Number one, is this your understanding
5 of what was discussed? That's one. And number two,
6 do you have anything to change now as to what should
7 be put in order.

8 Mr. Ellis, is that a fair
9 representation of what was discussed?

10 MR. ELLIS: Yes, it is, Judge.

11 JUDGE DUGGAN: Do you have any further
12 corrections right now?

13 MR. ELLIS: I do not. At this time, I do not.

14 JUDGE DUGGAN: Mr. Shumate, is what I stated a
15 fair representation as to what was discussed?

16 MR. SHUMATE: Yes.

17 JUDGE DUGGAN: Do you have any changes that you
18 want to propose now understanding you're not limited
19 in any way from clarifying or adding to drafts that
20 will be circulated.

21 MR. SHUMATE: No additions at this time.

22 JUDGE DUGGAN: Okay. Ms. Kuntz, is what I

1 stated a fair representation of what was discussed?

2 MS. KUNTZ: Yes.

3 JUDGE DUGGAN: Okay. Do you have anything that
4 you want to add now to the draft that I may
5 circulate?

6 MS. KUNTZ: No.

7 JUDGE DUGGAN: Okay. Mr. Blair, is that a fair
8 representation of what was discussed?

9 MR. BLAIR: Yes.

10 JUDGE DUGGAN: Do you have anything that should
11 be added before we circulate a draft?

12 MR. BLAIR: No.

13 JUDGE DUGGAN: Okay. Very good.

14 Then it's my understanding that that
15 is the working definition of the standard to be met
16 in determining what is going to be required of UP,
17 and that that is an agreeable definition for the
18 parties.

19 Once again, is that your
20 understanding, Mr. Ellis?

21 MR. ELLIS: Yes, Judge.

22 JUDGE DUGGAN: Mr. Shumate?

1 MR. SHUMATE: Yes.

2 JUDGE DUGGAN: Ms. Kuntz?

3 MS. KUNTZ: Yes.

4 JUDGE DUGGAN: Mr. Blair?

5 MR. BLAIR: Yes.

6 JUDGE DUGGAN: Very good.

7 All right. Is anybody aware of

8 anything else we need to put on the record?

9 Mr. Ellis?

10 MR. ELLIS: No, Judge.

11 JUDGE DUGGAN: Mr. Shumate?

12 MR. SHUMATE: No.

13 JUDGE DUGGAN: Ms. Kuntz?

14 MS. KUNTZ: No.

15 JUDGE DUGGAN: Mr. Blair?

16 MR. BLAIR: No.

17 JUDGE DUGGAN: Then with the understanding that

18 everybody has already on the record waived the

19 ex parte prohibition...

20 Go ahead.

21 MR. BLAIR: Staff hasn't indicated their

22 concurrence yet with the petition.

1 JUDGE DUGGAN: Oh, very good.

2 So, staff, state your position,
3 please.

4 MR. BLAIR: Staff concurs or agrees or has no
5 objection to Carlinville's petition for a new ped
6 crossing at this location.

7 JUDGE DUGGAN: Okay. As long as there is a
8 definition of the standards which they must meet
9 consistent with the standard I just read into
10 evidence, correct?

11 MR. BLAIR: That's correct.

12 JUDGE DUGGAN: Very good.

13 All right. I appreciate that.

14 Okay. If there's nothing else, then I
15 will do a draft, and we will see if we can get an
16 order that is acceptable to all.

17 So the record is marked heard and
18 taken.

19 MR. SHUMATE: Hold on, Judge.

20 JUDGE DUGGAN: Okay. We're not heard and
21 taken.

22 What do you need, Mack?

1 MR. SHUMATE: One thing.

2 Do you want us all to put on the
3 record that we waive ex parte?

4 JUDGE DUGGAN: We already did that. We did
5 that at the beginning.

6 MR. SHUMATE: Okay.

7 JUDGE DUGGAN: The record is marked heard and
8 taken.

9 HEARD AND TAKEN.

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